

LEGISLATIVE BILL 957

Approved by the Governor April 10, 2000

Introduced by Dierks, 40; Schrock, 38; Wehrbein, 2; Landis, 46

AN ACT relating to the environment; to amend sections 81-15,167, 81-15,169, 81-15,173, 81-15,174, 81-15,175, and 81-15,176, Reissue Revised Statutes of Nebraska; to create the Carbon Sequestration Advisory Committee; to provide duties; to create funds; to change provisions of the Nebraska Environmental Trust Act; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Increasing levels of carbon dioxide and other greenhouse gases in the atmosphere has led to growing interest in national and international forums for implementing measures to slow and reverse the buildup of such atmospheric constituents. Such measures may potentially include the establishment of systems of trading in credits for adoption of practices, technologies, or other measures which decrease net emissions of carbon dioxide and other greenhouse gases.

Improved agricultural production methods, soil conservation practices, and other methods of stewardship of soil resources have great potential to increase carbon sequestration on agricultural lands and help offset carbon dioxide emissions from other sectors of the economy. It is in the interest of agricultural producers and the public in general that the Director of Natural Resources document and quantify carbon sequestration and greenhouse emissions reductions associated with agricultural practices, management systems, and land uses occurring on cropland and rangeland in Nebraska. It is the intent of the Legislature that efforts to quantify and verify carbon sequestration on agricultural land will enhance the ability of the state's agricultural landowners to participate in any system of carbon or greenhouse emissions marketing or trading.

Sec. 2. (1) The Carbon Sequestration Advisory Committee is created. The committee shall consist of the following members appointed by the Governor:

- (a) The Director of Agriculture or his or her designee;
- (b) The Director of Natural Resources or his or her designee;
- (c) The Director of Environmental Quality or his or her designee;
- (d) One member representing the Natural Resources Conservation Service of the United States Department of Agriculture;
- (e) One member representing the University of Nebraska Institute of Agriculture and Natural Resources;
- (f) One member representing the Nebraska Energy Office;
- (g) One member representing an entity which generates electrical energy;
- (h) Two members who are producers of field crops at least one of whom actively employs a minimum tillage management system in his or her farming operation;
- (i) Two members who are producers of livestock at least one of whom is actively involved in range management;
- (j) One member with expertise in greenhouse emissions marketing or trading;
- (k) One member representing natural resources districts; and
- (l) One member representing the ethanol industry.

(2) Members of the committee shall serve without compensation but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The Director of Natural Resources shall assist the committee with administrative and operational support. The Nebraska Natural Resources Commission may advise the committee in the performance of its duties under sections 1 to 6 of this act.

Sec. 3. The Carbon Sequestration Advisory Committee shall:

(1) Advise and assist the Director of Natural Resources in preparing the reports pursuant to sections 4 and 5 of this act and in conducting the assessment pursuant to section 5 of this act;

(2) Recommend policies or programs to enhance the ability of Nebraska agricultural landowners to participate in systems of carbon trading. Such recommendations shall include potential policies or programs designed to optimize economic benefits to agricultural producers participating in carbon trading transactions. Such policies or programs may include, but are not limited to, identifying existing or the potential of creating nonprofit

organizations or other public or private entities capable of serving as assemblers of carbon credits or as intermediaries on behalf of producers in carbon trading systems;

(3) Encourage the production of educational and advisory materials regarding carbon sequestration on agricultural lands and participation in systems of carbon or greenhouse emissions trading; and

(4) Identify and recommend areas of research needed to better understand and quantify the processes of carbon sequestration on agricultural lands.

Sec. 4. On or before December 1, 2001, the Director of Natural Resources, in consultation with the Carbon Sequestration Advisory Committee, shall prepare a report to the Legislature. The report shall include, but not be limited to:

(1) The potential for, and potential forms of, greenhouse emissions regulation;

(2) The potential for development of a system or systems of carbon emissions trading or markets for carbon sequestered on agricultural land;

(3) Agricultural practices, management systems, or land uses which increase stored soil carbon and minimize carbon dioxide or other greenhouse emissions associated with agricultural production;

(4) Methods for measuring and modeling net carbon sequestration and greenhouse emissions reduction associated with various agricultural practices, management systems, or land uses occurring on agricultural land;

(5) Areas of scientific uncertainty with respect to quantifying and understanding greenhouse emission reductions or soil carbon sequestration associated with agricultural activities; and

(6) Any recommendations of the Carbon Sequestration Advisory Committee developed pursuant to section 3 of this act.

Sec. 5. (1) The Director of Natural Resources shall, in consultation with the Carbon Sequestration Advisory Committee, assess agricultural lands in the State of Nebraska for past carbon sequestration and future carbon sequestration potential. The assessment shall seek to quantify carbon sequestration associated with various agricultural practices, management systems, and land uses occurring on agricultural lands in this state. On or before January 1, 2002, the director shall publish a report of the findings. The director may, from time-to-time, update such findings as advancements in understanding of the processes of carbon sequestration and new data become available.

(2) The assessment shall be conducted in a manner that shall provide a means for owners of agricultural land to estimate past and future net carbon sequestration resulting from agricultural practices, conservation measures, management systems, and land uses occurring on their property. The Director of Natural Resources may contract and cooperate with the Natural Resources Conservation Service of the United States Department of Agriculture to conduct assessment activities provided for in this section.

(3) The director may apply for and accept grants, gifts, or other sources of public and private funds to carry out the purposes of sections 1 to 6 of this act.

Sec. 6. The Carbon Sequestration Assessment Cash Fund is created. The fund shall be used to carry out sections 1 to 6 of this act. The State Treasurer shall credit to the fund any money appropriated to the fund by the Legislature and any money received as gifts, grants, or other contributions from public or private sources obtained for the purposes of sections 1 to 6 of this act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 7. Section 81-15,167, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,167. Sections 81-15,167 to 81-15,176 and section 11 of this act shall be known and may be cited as the Nebraska Environmental Trust Act.

Sec. 8. Section 81-15,169, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,169. For purposes of the Nebraska Environmental Trust Act:

(1) Board ~~shall mean~~ means the Nebraska Environmental Trust Board; and

(2) Fund ~~shall mean the Nebraska Environmental Trust Fund; and~~

(3) Trust ~~shall mean~~ means the Nebraska Environmental Trust.

Sec. 9. Section 81-15,173, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,173. The board shall have and may exercise the following powers and duties:

(1) Adopt bylaws to govern the proceedings of the board;

(2) Keep records, conduct hearings, and adopt and promulgate rules and regulations to carry out its duties and implement the Nebraska Environmental Trust Act;

(3) Contract with the Game and Parks Commission for administrative support and with governmental agencies for technical assistance;

(4) Establish environmental priorities for use of the ~~trust funds~~;

(5) Establish ad hoc advisory boards and subcommittees;

(6) Sponsor or assist environmental proposals pertaining to the environmental priorities of the board, including issuing grants to agencies, organizations, and persons engaged in the purposes of the trust;

(7) Cooperate with or assist any unit of the state, any political subdivision, or any private, public, or federal agency, foundation, or person in furtherance of the purposes of the trust; ~~and~~

(8) Acquire and dispose of personal property in furtherance of the purposes of the trust; and

(9) Apply for or accept any monetary gift, grant, bequest, royalty, or donation, designate the fund to which it will be credited, and expend the proceeds in furtherance of the purposes of the trust. and use it for the general purposes of the trust.

Sec. 10. Section 81-15,174, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,174. There is hereby established the Nebraska Environmental Trust Fund which shall be a cash fund. The fund shall be used to carry out the purposes of the Nebraska Environmental Trust Act, including administrative costs. Money in the fund shall include proceeds credited pursuant to section 9-812 and ~~any monetary gifts, grants, or donations~~ proceeds designated by the board pursuant to section 81-15,173. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 11. The Nebraska Environmental Endowment Fund is created. The fund shall be used to carry out the purposes of the Nebraska Environmental Trust Act. The fund shall include proceeds designated by the board pursuant to section 81-15,173, including grants from the Nebraska Environmental Trust Fund. Grants from the Nebraska Environmental Trust Fund to the Nebraska Environmental Endowment Fund shall be no more than twice the total of any other proceeds received by the Nebraska Environmental Endowment Fund for the same year. Such grants, considered in the aggregate, shall in no case exceed fifty percent of the total proceeds credited to the Nebraska Environmental Trust Fund pursuant to section 9-812 for that year.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Allocations received by the Nebraska Environmental Endowment Fund from the Nebraska Environmental Trust Fund shall not be reallocated by the board, but shall remain invested. Any interest income earned by the Nebraska Environmental Endowment Fund shall be available for allocation by the board as provided in section 81-15,175.

Sec. 12. Section 81-15,175, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,175. (1) The board may make an annual allocation from the Nebraska Environmental Trust Fund to the Nebraska Environmental Endowment Fund as provided in section 11 of this act. The board shall make annual allocations from the ~~fund~~ Nebraska Environmental Trust Fund and from the Nebraska Environmental Endowment Fund for projects which conform to the environmental priorities of the board established pursuant to section 81-15,176 and to the extent the board determines those projects to have merit. The board shall establish an annual calendar for receiving and evaluating proposals and awarding grants. To evaluate the economic, financial, and technical feasibility of proposals, the board may establish subcommittees, request or contract for assistance, or establish advisory groups. Private citizens serving on advisory groups shall be reimbursed for their actual and necessary expenses pursuant to sections 81-1174 to 81-1177.

(2) The board shall establish a rating system for ranking proposals which meet the board's environmental priorities and other criteria. The rating system shall include, but not be limited to, the following considerations:

(a) Conformance with priorities established pursuant to section 81-15,176;

(b) Amount of funds committed from other funding sources;

(c) Encouragement of public-private partnerships;

(d) Geographic mix of projects over time;

(e) Cost-effectiveness and economic impact;

(f) Direct environmental impact; and

(g) Environmental benefit to the general public and the long-term nature of such public benefit.

(3) The results of the annual rating of proposals shall guide the board's allocation of funds, except that the board may assign a higher rating to any proposal with an affirmative vote of eleven members. The motion for such an action shall specify the reasons for such action. The board may commit funds to multiyear projects, subject to available funds and appropriations. No commitment shall exceed three years without formal action by the board to renew the grant or contract. Multiyear commitments may be exempt from the rating process, except for the initial application and requests to renew the commitment.

(4) The board shall adopt and promulgate rules and regulations and publish guidelines governing allocations from the fund. The board shall conduct annual reviews of existing projects for compliance with project goals and grant requirements.

Sec. 13. Section 81-15,176, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,176. (1) Subject to subsection (3) of this section, the board shall establish environmental priorities for the trust. The board, after allowing opportunity for public comment, shall designate as priorities those environmental goals which most affect the natural physical and biological environment in Nebraska, including the air, land, ground water and surface water, flora and fauna, prairies and forests, wildlife and wildlife habitat, and areas of aesthetic or scenic values. In designating environmental priorities, the board shall attempt to focus on the areas which promise the greatest opportunities for effective action to achieve and preserve the future environmental quality in the state. The board shall establish priorities for five-year periods beginning July 1, 1995, except that the board may make annual modifications to refine and clarify its priorities. The board shall provide for public involvement in developing the priorities for such five-year periods, including public meetings in each of the three congressional districts.

(2) The board shall establish criteria for determining the eligibility of projects for grant assistance, ~~from the fund~~, which criteria shall include the following:

(a) The ~~fund~~ grants shall not provide direct assistance to regulatory programs or to implement actions mandated by regulations except remediation;

(b) ~~Before January 1, 1997, no more than twenty-five percent of allocations in any year shall assist remediation of soils or ground water, and no allocation for this purpose shall occur unless all other available sources of funding are, in the opinion of the board, being substantially utilized. On and after January 1, 1997, no~~ No more than sixty percent of grant allocations in any year shall assist remediation of soils or ground water, and no allocation grants for this purpose shall occur unless all other available sources of funding are, in the opinion of the board, being substantially utilized;

(c) The ~~fund~~ grants shall not pay for private benefits or to relieve private liability for environmental damage;

(d) The ~~fund~~ grants shall not pay for projects which have direct beneficiaries who could afford the costs of the benefits without experiencing serious financial hardship;

(e) The ~~fund~~ grants should assist those projects which offer the greatest environmental benefits relative to cost;

(f) The ~~fund~~ grants should assist those projects which provide clear and direct environmental benefits;

(g) The ~~fund~~ grants should assist those projects which will make a real contribution to achieving the board's environmental priorities;

(h) The ~~fund~~ grants should assist those projects which offer the greatest public benefits; and

(i) The ~~fund~~ grants shall not pay for land or easements acquired without the full and express consent of the landowner.

(3) Until the first five-year priorities become effective on July 1, 1995, the board shall observe the following priorities for allocating ~~funds~~ grants:

(a) Critical habitat areas, including wetlands acquisition, preservation, and restoration and acquisition and easements of areas critical to rare or endangered species;

(b) Surface water quality, including actions to preserve lakes and streams from degradation;

(c) Ground water quality, including fostering best management

practices as defined in section 46-656.07, actions to preserve ground water from degradation, and remediation of soils or ground water; and

(d) Development of recycling markets and reduction of solid waste volume and toxicity.

(4) The board may refine and clarify these initial priorities.

Sec. 14. Original sections 81-15,167, 81-15,169, 81-15,173, 81-15,174, 81-15,175, and 81-15,176, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 15. Since an emergency exists, this act takes effect when passed and approved according to law.